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The chief executive of the Financial Law Panel has spoken at a number of IALS seminars on the work of the Panel and legal issues relating to the financial markets. A brief overview of his role and the current projects being undertaken by the panel is provided below.

The Financial Law Panel was set up in 1993 at the instigation of the Bank of England and the Corporation of London to identify areas of legal uncertainty affecting the wholesale financial markets and eliminate or reduce the resulting problems. During its six years of life the panel has looked at some 200 separate topics of domestic and global concern, and produced reports aimed in many cases at assisting and influencing other bodies concerned with the financial markets. It is objective and impartial, and is not a pressure group or legal reform body.

The panel is sponsored by some 111 commercial and investment banks, insurance companies and other large financial institutions, along with some of the legal and accountancy firms which serve them. As at December 1999 the panel's secretariat comprised the chief executive, Colin Bamford, the deputy chief executive, Martin Thomas, the panel secretary and two secretarial members of staff. Additional assistance comes from young lawyers seconded from major solicitors' firms: Leonard Ng from Sidley and Austin is joining this year, replacing Sharona Attar (Hammond Suddards) and Arnondo Chakrabarti (Allen & Overy).

Colin Bamford was a partner at Richards Butler before he joined the panel, attracted by a 'green field site' where he could use his knowledge and experience to help shape the future of a new organisation. In its first six years the panel has turned its attention to some 200 separate topics of domestic and global concern, making recommendations and producing written reports where appropriate for the benefit of sponsors. One area where Colin Bamford has been closely involved concerns the taking of security over intangibles, which has become an

increasingly common practice over recent years.

Questions on security over debt have been causing practitioners concern because there have been few cases dealing with the subject. The consequence of this has been, as Colin Bamford says, that:

'people tend to extrapolate on what they have in a way that is dangerous. We created a panel, chaired by Michael Crystal QC, to look at the issue and create "virtual cases" where the main issues could not be avoided'.


At present the panel is involved in setting up an international markets liaison group composed of legal and non-legal experts from New York, Singapore, Hong Kong, Tokyo, and various European countries to act as a 'think tank' on matters of international significance, such as the taking of security over financial instruments held in various clearing systems throughout the world. The panel has been involved with international projects before, notably in Japan where hardly any case law existed to assist those working in the financial markets, and the relevant knowledge rested with a small number of distinguished professors. By helping to set up the Financial Law Board, the panel played a key role in stimulating a successful multidisciplinary approach to resolving issues relating to financial services law in Japan.

PROJECTS IN PROGRESS

The panel has a number of lengthy and complex projects under review, including the process colourfully referred to as 'Operation Machete'. The objective of this project is to cut away some of the legal and documentary undergrowth found in the bond market, which serves no useful commercial purpose. Recently, the European Commission has clarified

its position in relation to the legal status of guarantees given by state entities to banks and bondholders where the underlying scheme involves an element of state aid. This clarification represents an important step in allowing banks to decide how they should deal with this issue within their own business, and the panel is preparing a guidance to send out to sponsors.

Other projects in progress involve a review of administration proceedings – the proposals for which have been submitted to the relevant judges for consultation – and a discussion paper addressing the content of clauses commonly found in confidentiality agreements. Many of the legal implications of the growth of e-commerce and e-business are as yet uncertain, and after discussions with a group of legal experts drawn from various disciplines the panel has formed three specialist work groups. These will consider issues relating to jurisdiction, the general effect on underlying legal principles and proof and evidence.

The panel is currently contacting a cross-section of sponsors in the commercial banking field to sound out opinions on whether a problem exists in relation to the issue of injunctions by the courts in contemplation of, or during the course of, litigation to prevent defendants moving their assets out of jurisdiction. In some cases it appears that the terms of the order are so widely framed that in practice banks cannot be confident that their efforts comply with everything demanded of them. 

Julian Harris

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